IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
November 1999 Session

STATE OF TENNESSEE v. JOSEPH RAYMOND HARMON

Appeal as of Right from the Criminal Court for Loudon County
No. 9426 E. Eugene Eblen, Judge

No. E1999-00130-CCA-R3-CD
October 20, 2000

In a Loudon County bench trial, the appellant, Joseph Raymond Harmon, was convicted of one (1) count of unlawful possession of a weapon to wit: a club, with the intent to go armed in violation of Tenn. Code Ann. § 39-17-1307. The trial court sentenced him to serve thirty (30) days in the Loudon County Jail. On appeal, the appellant raises the following issues for this Court's review: (1) whether the evidence is sufficient to sustain his conviction; (2) whether he was denied his right to a speedy trial under the federal and state constitutions; and (3) whether the trial court erred in failing to grant his motion to reduce his sentence. After a thorough review of the record before this Court, we conclude that there is insufficient evidence to support the appellant's conviction for unlawful possession of a "club" with the intent to go armed. Therefore, the judgment of the trial court is reversed, and the case is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court of Loudon County is Reversed and Dismissed

JERRY SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, J., and THOMAS T. WOODALL, J., joined.

Joe H. Walker, Public Defender, Harriman, Tennessee, on appeal. Walter Johnson and Alfred Hathcock, Assistant Public Defenders, Harriman, Tennessee, at trial for the appellant, Joseph Raymond Harmon.

Paul G. Summers, Attorney General and Reporter, Clinton J. Morgan, Assistant Attorney General, Nashville, Tennessee and J. Scott McCluen, District Attorney General, Frank A. Harvey, Assistant District Attorney, Kingston, Tennessee for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On the evening of January 31, 1996, Loudon police officer Robert Scott Newman observed a blue Camaro traveling down a city street. The driver of the Camaro stopped the vehicle in the middle of the street and then sped further down the road. As the driver was making a right turn, the wheels of the vehicle jumped the curb onto the sidewalk. Officer Newman activated his blue lights, and the driver of the vehicle pulled to the side of the road. However, the driver then pulled back onto the road and proceeded across a bridge. As Officer Newman followed the car across the bridge, the driver of the vehicle made obscene hand gestures out of the window. Finally, as the driver reached the other side of the bridge, he pulled his vehicle to the side of the road and stopped.

At trial, the driver of the vehicle was identified as the appellant. Officer Newman testified that as he approached the vehicle, he noticed an odor of alcohol. As the appellant stepped from his vehicle, he almost fell. Because Officer Newman could smell alcohol "emitting off of" the appellant, he asked the driver to perform a sobriety test. When the appellant did not perform the sobriety test to Officer Newman's satisfaction, he arrested the appellant for driving under the influence.

When the officer handcuffed him, the appellant became threatening and belligerent. Officer Newman searched the appellant for weapons and found some brass knuckles, as well as pepper spray, in the appellant's front pocket. The officer then transported the appellant to the county jail, and during the ride, the appellant threatened the officer further. He informed the officer that he intended to use the pepper spray on the police. Additionally, he told the officer that "he was on his way . . . to kill an individual" by the name of Jimmy Bingham.

After arriving at the county jail, the appellant became increasingly violent. Although the appellant demanded a "breath test," officers at the jail decided not to administer the test out of a concern for the safety of the equipment and other individuals in the area.

The appellant was indicted on one (1) count of driving under the influence, second offense, and one (1) count of unlawful possession of a weapon with the intent to go armed. After a bench trial, the trial court acquitted the appellant of driving under the influence, but found him guilty of unlawful possession of a weapon with the intent to go armed. The trial court sentenced the appellant to thirty (30) days in the county jail. From his conviction and sentence, the appellant now brings this appeal.

SUFFICIENCY OF THE EVIDENCE

In his first issue, the appellant challenges the sufficiency of the convicting evidence. He argues that the prohibited weapon, the brass knuckles, was designed with a hook so that it could be used as a belt buckle. He claims that the weapon had a legitimate purpose; thus, the state did not present proof beyond a reasonable doubt that he possessed the brass knuckles with the intent to go armed. We agree that the evidence is insufficient to support the appellant's conviction, but on a different basis.

A.

In a bench trial, the verdict of a trial judge is entitled to the same weight on appeal as a jury verdict. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978); *see also* State v. Horton, 880 S.W.2d 732, 734 (Tenn. Crim. App. 1994). A guilty verdict accredits the state's witnesses and all conflicts are resolved in favor of the state. State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). On appeal, the state is entitled to the strongest legitimate view of the evidence and all legitimate or reasonable inferences which may be drawn therefrom. Id.

This Court is not at liberty to reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Furthermore, this Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the defendant demonstrates that the facts contained in the record and the inferences which may be drawn therefrom are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. State v. Brewer, 932 S.W.2d 1, 19 (Tenn. Crim. App. 1996). Accordingly, it is this Court's duty to affirm the convictions if the evidence, viewed under these standards, was sufficient for any rational trier of fact to have found the essential elements of the offense beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994).

B.

The indictment charged the appellant with carrying "a hand weapon, commonly known as brass knuckles" with the intent to go armed in violation of Tenn. Code Ann. § 39-17-1307. The relevant statute provides that it is an offense to carry with the intent to go armed "a firearm, a knife with a blade length exceeding four inches (4"), or a club." Tenn. Code Ann. § 39-17-1307(a)(1). Under the circumstances of this case, this offense is a Class C misdemeanor. § 39-17-1307(a)(2). "Knuckles" or brass knuckles are defined at Tennessee Code Annotated Section 39-17-1301(7) which provides:

> "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

These weapons are essentially contraband and any intentional possession, manufacture, transport repair or sale is a Class A misdemeanor. Tenn. Code Ann. § 39-17-1302(a)(6).

Although the state argues that sections 39-17-1301(7) and 39-17-1307 (a)(1), when construed to include brass knuckles as a "club", do not conflict with section 39-17-1302 (a)(6), we must disagree. In construing the meaning of these statutes, we are guided by the time-honored principle of statutory construction *generalis specialibus non derogant*.[1] "It is well settled that a specific provision relating to a particular subject controls and takes precedence over a general provision applicable to a multitude of subjects." State v. Webster, 972 S.W.2d 701, 703 (Tenn. Crim. App. 1998)(citing State v. Black, 897 S.W.2d 680, 683 (Tenn.1995)). Furthermore, the United States Supreme Court has held that "[w]here there are two acts or provisions, one of which is special and

[1] Literally, "general words do not derogate from special."

particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict." Rodgers v. United States, 185 U.S. 83, 88, 22 S. Ct. 582, 584, 46 L. Ed. 816 (1902)(quoting Crane v. Reeder, 22 Mich. 322, 334 (Mich. 1873)). In short, the legislature clearly intended one who possessed "knuckles" to be treated differently than one who possessed a "club." Because a "club" within the meaning of § 39-17-1307 does not encompass "brass knuckles" there is a failure of the State to prove an essential element of the offense charged.[2] Therefore, the case is reversed and dismissed.[3]

JERRY SMITH, JUDGE

[2]We are not unmindful of Tennessee Code Annotated Section 39-11-109 which provides:

> (a) When the same conduct may be defined under both a specific statute and a general statute, the person may be prosecuted under either statute unless the specific statute precludes prosecution under the general statute.
>
> (b) When the same conduct may be defined under two (2) or more specific statutes, the person may be prosecuted under either statute unless one (1) specific statute precludes prosecution under another.

However, as noted in the Court's opinion, the statutes in this case relate to distinct and separate forms of criminal conduct, not the same conduct. Thus, § 39-11-109 is not applicable.

[3]Because the appropriate remedy for failure of the State to prove an essential element of the crime charged is dismissal of the charges, we need not reach the merits of the appellant's remaining issues.